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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,575

11/28/2003

Martin Broberg

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EXAMINER

GOFF II, JOHN L

ART UNIT

PAPER NUMBER

1733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/722,575

Applicant(s)

BROBERG ET AL.

Examiner

John L. Goff

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 14-58 is/are pending in the application.
- 4a) Of the above claim(s) 3,5-9,18-23 and 56-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,10-12,14-17 and 24-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the amendment filed on 12/14/06. The previous claim objections have been overcome.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

3. Claims 31, 32, and 44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims were amended to require joining by "at least one of melt-glue, heat and pressure". The specification does not describe the joining of any of the layers by applying only heat (without melt-glue or pressure) or applying only melt-glue (without heat or pressure). It is suggest applicants amend the claims to delete "at least one of melt-glue, heat and pressure" and insert therein - - glue and at least one of heat and pressure - - or similar to overcome the rejection.

***Claim Rejections - 35 USC § 103***

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg et al. (WO 02/47906) in view of any one of Mason (U.S. Patent 1,995,264), Berry et al. (U.S. Patent 4,406,455), or Karam (U.S. Patent 6,485,823) and Moebus (WO 01/21366 and see also English equivalent U.S. Patent 6,761,961).

Sjoberg et al. disclose a method of manufacturing a decorative laminate used for floor coverings comprising providing a carrying core layer, e.g. fiber board, providing a dampening (e.g. acoustic dampening) foil layer of a thermoplastic elastomer on the upper side of the core layer, providing an upper decorative and abrasion resistant thermosetting laminate layer on the foil layer, and then pressing to form the decorative laminate (Page 1, lines 17-26 and Page 2, lines 12-14). Sjoberg et al. are silent as to joining a balance layer on the lower side of the core layer. Mason discloses a method of manufacturing a decorative laminate used for floor coverings comprising adhering a core layer to an upper layer and an identical/symmetrical lower layer wherein the upper layer includes a decorative and abrasion resistant layer and the lower layer is added to balance the upper layer and prevent the decorative laminate from warping while

Art Unit: 1733

also providing the capability of reversing the decorative laminate in the event the upper layer is damaged or it is desired to expose the decorative pattern provided on the lower layer (Figures 1-3 and Page 1, lines 1-6, 29-32, and 38-48 and Page 2, lines 40-46 and 14-28). Berry et al. disclose a method of manufacturing a decorative laminate used for floor coverings comprising adhering a core layer to upper layers and identical/symmetrical lower layers wherein the upper layers include decorative and abrasion resistant layers and the lower layers are added to balance the upper layers and prevent the decorative laminate from warping (Figure 3 and Column 4, lines 51-68 and Column 5, lines 1-2). Karam discloses a method of manufacturing a decorative laminate used for floor coverings comprising adhering a core layer to upper layers and identical/symmetrical lower layers wherein the upper layers include decorative and abrasion resistant layers and the lower layers act to balance the upper layers (Figure 1 and Column 4, lines 61-64 and Column 5, lines 32-35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to join on the lower side of the core layer taught by Sjoberg et al. a balance layer that is identical/symmetrical with the layers on the upper side of the core layer, i.e. a balance layer comprising the dampening foil layer of thermoplastic elastomer and the decorative and abrasion resistant thermosetting laminate layer, as shown by any one of Mason, Berry et al., or Karam to prevent the decorative laminate from warping and provide the capability of reversing the decorative laminate in the event the upper layers of the decorative laminate are damaged or it is desired to expose the decorative pattern provided on the lower layers.

Regarding claim 1, Sjoberg et al. do not specifically teach the decorative laminate is cut into panels and provided with edges intended for joining, it being noted Sjoberg et al. teach the

Art Unit: 1733

decorative laminate is used for floor coverings (Page 1, lines 6-8). Moebus discloses a method of manufacturing a decorative laminate used for floor coverings comprising providing a carrying core layer, providing an upper decorative and abrasion resistant laminate layer on the upper side of the core layer, pressing to form the decorative laminate, and then cutting the decorative laminate into panels and milling edges on the cut panels intended for joining together as a floor covering (Column 1, lines 15-47 of U.S. Patent 6,761,961). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in Sjoberg et al. as modified by any one of Mason, Berry et al., or Karam the well known finishing steps for forming decorative laminates into floor coverings of cutting the decorative laminate into panels and milling edges on the cut panels intended for joining as shown for example by Moebus wherein only the expected results would be achieved.

Regarding claims 2, 10-12, 37, 38, 46, 47, 50, 54, and 55, Sjoberg et al. further teach the decorative and abrasion resistant laminate is formed by providing one or more underlay papers impregnated with phenol-formaldehyde resin, providing on the underlay papers one or more décor papers impregnated with melamine-formaldehyde resin, providing on the décor papers one or more overlay sheets impregnated with melamine-formaldehyde resin and hard particles such as silicon oxide, aluminum oxide, silicon carbide, etc. having an average size of 5 - 60  $\mu\text{m}$ , and laminating the papers together under increased heat and pressure to form the upper decorative and abrasion resistant laminate having a thickness of 0.3 - 0.9 mm and a density of 1250 - 1500  $\text{kg/m}^3$  (Page 1, lines 27-28 and Page 2, lines 1-11).

Art Unit: 1733

Regarding claims 39-42 and 51-53, Sjoberg et al. teach the dampening foil is a thermoplastic elastomer having an elasticity compression coefficient of 0.8 - 2.0 Mpa, a thickness of 0.1 - 0.5 mm, and a density of 180 - 330 kg/m<sup>3</sup> (Page 2, lines 15-22).

Regarding claims 17, 30-32, and 43-45, Sjoberg et al. teach the upper decorative and abrasion resistant laminate, dampening foil, and carrying core layer are joined by means of melt-glue, heat, and pressure (Page 2, lines 23-27).

Regarding claims 14-16, 48, and 49, as noted above Sjoberg et al. teach the dampening foil is a thermoplastic elastomer having an elasticity compression coefficient of 0.8 - 2.0 Mpa, a thickness of 0.1 - 0.5 mm, and a density of 180 - 330 kg/m<sup>3</sup>, and Sjoberg et al. teach the decorative and abrasion resistant laminate has a thickness of 0.3 - 0.9 mm and a density of 1250 - 1500 kg/m<sup>3</sup>. Absent any unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to experimentally determine the thickness, density, and elasticity compression coefficient of the balance layer as taught by Sjoberg et al. as modified by any one of Mason, Berry et al., or Karam within the ranges disclosed by Sjoberg et al. for the dampening foil and decorative and abrasion resistant laminate as a function of providing a balance layer that prevents the decorative laminate from warping as doing so would have required nothing more than ordinary skill and routine experimentation.

Art Unit: 1733

6. Claims 24-26, 29, and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg et al., any one of Mason, Berry et al., or Karam, and Moebus as applied to claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 above, and further in view of Leukel et al. (U.S. Patent 4,770,916).

Sjoberg et al., any one of Mason, Berry et al., or Karam, and Moebus as applied above teach all of the limitations in claims 24-26, 29, and 33-36 except for a teaching of including a conductive material such as carbon black or carbon fiber in the glue and elastomer, i.e. balance, layers. Leukel et al. disclose a floor covering including rubber and glue layers wherein the layers include a conductive material such as carbon black or carbon fiber (conductivity greater than 500 k $\Omega$ cm) to impart static dissipating properties to the floor covering (Column 3, lines 5-9 and 36-49 and Column 4, lines 59-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the glue and elastomer layers of Sjoberg et al. as modified by any one of Mason, Berry et al., or Karam, and Moebus a conductive material such as carbon black or carbon fiber to impart static dissipating properties to the decorative laminate floor covering as shown by Leukel et al.

7. Claims 24 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sjoberg et al., any one of Mason, Berry et al., or Karam, and Moebus as applied to claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 above, and further in view of Nowell et al. (U.S. Patent 4,885,659).

Sjoberg et al., any one of Mason, Berry et al., or Karam, and Moebus as applied above teach all of the limitations in claims 24 and 27-29 except for a teaching of including a conductive material such as a vacuum metallized aluminum layer in the thermoplastic, i.e. balance, layer.



Art Unit: 1733

Nowell et al. disclose a floor covering including a thermoplastic layer wherein the thermoplastic layer includes a conductive material such as a vacuum metallized aluminum layer (conductivity greater than 500 kΩcm) to impart static dissipating properties to the floor covering (Column 2, lines 3-18 and Column 4, lines 18-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the thermoplastic layers of Sjoberg et al. as modified by any one of Mason, Berry et al., or Karam, and Moebus a conductive material such as a vacuum metallized aluminum layer to impart static dissipating properties to the decorative laminate floor covering as shown by Nowell et al.

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1733

9. Claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 13-16 of U.S.

Patent No. 6,893,713 in view of any one of Mason, Berry et al., or Karam, and Moebus.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-11 and 13-16 of U.S. Patent No. 6,893,713 disclose the invention substantially as claimed except for teaching including a balance layer comprising a thermoplastic elastomer on the lower side of the core layer and cutting the decorative laminate into panels and providing the panels with edges intended for joining which would have been obvious as discussed above.

10. Claims 24-26, 29, and 33-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 13-16 of U.S. Patent No. 6,893,713, any one of Mason, Berry et al., or Karam, and Moebus as applied to claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 above, and further in view of Leukel et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-11 and 13-16 of U.S. Patent No. 6,893,713, any one of Mason, Berry et al., or Karam, and Moebus disclose the invention substantially as claimed except for a teaching of including a conductive material in the glue and elastomer layer which would have been obvious as discussed above.

11. Claims 24 and 27-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 13-16 of U.S. Patent No. 6,893,713, any one of Mason, Berry et al., or Karam, and Moebus as applied to claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 above, and further in view of Nowell et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-11 and 13-16 of U.S. Patent No. 6,893,713, any one of Mason, Berry et al., or Karam, and Moebus disclose the

Art Unit: 1733

invention substantially as claimed except for a teaching of including a conductive material in the thermoplastic layer which would have been obvious as discussed above.

12. Claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, and 5-22 of copending Application No. 11/129,497 in view of any one of Mason, Berry et al., or Karam, and Moebus. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 2, and 5-22 of copending Application No. 11/129,497 disclose the invention substantially as claimed except for teaching including a balance layer comprising a thermoplastic elastomer on the lower side of the core layer and cutting the decorative laminate into panels and providing the panels with edges intended for joining which would have been obvious as discussed above.

This is a provisional obviousness-type double patenting rejection.

13. Claims 24-26, 29, and 33-36 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, and 5-22 of copending Application No. 11/129,497, any one of Mason, Berry et al., or Karam, and Moebus as applied to claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 above, and further in view of Leukel et al.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 2, and 5-22 of copending Application No. 11/129,497, any one of Mason, Berry et al., or Karam, and Moebus disclose the invention substantially as claimed except for a teaching of including a conductive material in the glue and elastomer layer which would have been obvious as discussed above.

This is a provisional obviousness-type double patenting rejection.

Art Unit: 1733

14. Claims 24 and 27-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, and 5-22 of copending Application No. 11/129,497, any one of Mason, Berry et al., or Karam, and Moebus as applied to claims 1, 2, 4, 10-12, 14-17, 30-32, and 37-55 above, and further in view of Nowell et al.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 2, and 5-22 of copending Application No. 11/129,497, any one of Mason, Berry et al., or Karam, and Moebus disclose the invention substantially as claimed except for a teaching of including a conductive material in the thermoplastic layer which would have been obvious as discussed above.

This is a provisional obviousness-type double patenting rejection.

#### ***Response to Arguments***

15. Applicant's arguments filed 12/14/06 have been fully considered but they are not persuasive.

Applicants argue, "Applicants note claims 18-23 are not subject to any rejection. Therefore, claim 18 (from which claims 19-23 depend) have been rewritten in independent form."

Claims 18-23 are withdrawn as they are directed to non-elected Species II-B. See paragraphs 4 and 5 of the office action mailed 3/7/06 which set forth the restriction requirement and applicants election, page 10 of the amendment filed 7/6/06 wherein applicants confirm claims 18-23 are drawn to a non-elected invention and withdrawn, and paragraph 4 of the office action mailed 9/15/06 wherein the examiner acknowledges applicants election.

Art Unit: 1733

Applicants argue, "Claims 31, 32 and 44 stand rejected under 35 USC § 112, first paragraph, as allegedly failing to be supported by sufficient disclosure in the originally filed application. The Office Action asserts because the specification only teaches joining by exclusively heat or exclusively melt-glue, the claims are not supported by the specification."

It is not asserted that the specification teaches joining only by exclusively heat or exclusively melt-glue. It is the examiners position that joining by exclusively heat or exclusively melt-glue is not disclosed in the specification and is new matter. Furthermore, applicants analysis of what is disclosed by the specification on page 12 of the arguments under 1.-5. also demonstrates that joining by exclusively heat or exclusively melt-glue is not supported by the specification. The examiner agrees with applicants in what is disclosed by the specification under 1.-5., and the claims should be amended in a like manner. A suggestion is set forth in the 35 USC 112 rejection above.

Applicants further argue Mason relates to structures quite distinct from decorative laminates, Berry et al. suggest the layer below the core is impregnated with thermosetting resin in contrast to the presently claimed balance layer constituted by a thermoplastic resin, and Karam suffers the same deficiencies as Berry et al. (See section IV under 1., 2., and 3. on pages 12 and 13 of applicants arguments).

Decorative laminates are considered to include flooring materials which is supported by applicants specification on page 1, first three paragraphs. Both Sjoberg et al. (Page 1, lines 4-8) and Mason (Page 1, left col., lines 1-3 and 29-32) are directed to laminates including flooring laminates such that both are considered directed to decorative laminates. Furthermore, Berry et al. and Karam are cited as directed to decorative laminates. Sjoberg et al. disclose a

Art Unit: 1733

decorative laminate comprising a carrying core and an upper layer including an upper layer having a thermoplastic elastomer layer. Each of Mason, Berry et al., and Karam disclose a decorative laminate including flooring laminates comprising a carrying core, an upper layer, and a lower layer wherein the lower layer is provide as a identical/symmetrical to the upper layer for reasons such as preventing the decorative laminate from warping, providing the capability of reversing the decorative laminate in the event the upper layer of the decorative laminate is damaged or it is desired to expose the decorative pattern provided on the lower layer. Modifying the decorative laminate of Sjoberg et al. to include an identical/symmetrical lower layer in view of any one of Mason, Berry et al., or Karam would have been obvious for these reasons, it being noted the impregnated thermosetting layers referred to by applicants as present in Karam and Berry et al. are the same as the thermosetting layers included in the upper layer of Sjoberg et al. which further demonstrates the analogous constructions of all the applied art.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

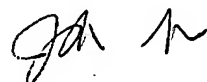
Art Unit: 1733

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is (571) 272-1216. The examiner can normally be reached on M-F (7:15 AM - 3:45 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John L. Goff  
Patent Examiner  
Art Unit 1733